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Supreme Court of the United States.

Filed Feb. 9, 1900.

CLEVELAND, CINCINNATTI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error.

vs.

No. 198.

PEOPLE OF THE STATE OF ILLINOIS, EX REL THOMAS M. JETT,
Defendant in Error.

ERROR TO SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

E. C. AKIN,
Attorney General, State of Illinois

C. A. HILL,
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SPRINGFIELD, ILL.:
PHILLIPS BROS., STATE PRINTERS
1900.

Supreme Court of the United States.

CLEVELAND, CINCINNATTI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error.

vs.

PEOPLE OF THE STATE OF ILLINOIS, EX REL THOMES M. JETT,
Defendant in Error.

No. 696.

ERROR TO SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

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BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

I.

This case involves the constitutionality, under the Federal Constitution, of an Act of the General Assembly of the State of Illinois, requiring all passenger trains to stop a sufficient length of time at railroad stations of county seats to receive and let off passengers with safety.

That act as it stood at the time of the filing of the petition for *mandamus* in this case, was as follows:—

> "Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: *Provided*, all reg-

ular passenger trains shall stop a sufficient length of time at the railroad stations of county seats to receive and let off passengers with safety."

That Act is Section 25 of an act entitled, "*An act in relation to fencing and operating railroads*," approved March 21, 1874, in force July 1, 1874, and was amended in 1899, (Hurd's Revised Statutes, 1899, Page 1333,) by adding thereto the following proviso:

> "*But provided further*, that where three regular passenger trains each way each day, are so stopped at the railroad stations of county seats on any division of any railroad in this State, it shall be lawful for not more than two through express or mail passenger trains, carrying mail or express and passengers, from one State to another, each way, each day, to pass through the railroad stations of the county seats on such divisions in this State, without stopping."

That proviso was not in force at the time of the filing of the petition in this case, nor at the time of the doing of the acts complained of in that petition, and has nothing to do with this case, except so far as it shows or tends to show that the power exercised in that section can be safely left to the People or to the Legislatures of the several States, and that they will, by amendment or otherwise, adapt such laws to the varying conditions and wants of the People of the State.

Counsel for plaintiff in error challenges the constitutionality of that Act as it stood before the amendment of 1899, upon the ground that it is in violation of the "Commerce Clause" of the Federal Constitution, giving Congress the power to regulate commerce among the several States. We insist that that Act is within the police or legislative power of the State, and a legitimate exercise of that power, and upon those contentions, the issue is joined, and the case must stand or fall.

We concede at the outset, that the power to regulate commerce with foreign nations, and among the several States, is vested exclusively in Congress, under the Federal Constitution, and that

that power can not be exercised by the Legislatures of the several States, but we insist that the Act here in question is not in conflict with that clause of the Federal Constitution, and that it does not even operate as a regulation of or a restraint upon such commerce. Counsel for plaintiff in error does not claim that it is a regulation of such commerce, but insists that it impedes or delays such commerce, by requiring passenger trains engaged exclusively in interstate commerce to stop at county seats, but to that we say that tuch incidental delay or impediment does not render the Act itself unconstitutional, and the fact that the "Knickerbocker Special" was put on and operated exclusively for the accommodation of interstate traffic between St. Louis and New York, does not make the law invalid, or change the legal aspect of the situation. All passenger trains in this country are engaged, to some extent at least, in interstate commerce or transportation, and in that respect is makes no difference whether such trains are fast or slow. Counsel for plaintiff in error practically admits that the Act in question is constitutional, except as against trains engaged exclusively in the transportation of passengers from one State to another. And the amended answer to the petition alleges that four regular passenger trains each way, each day, stop at the county seat of Montgomery County to receive and let off passengers, thus practically admitting that as to those four trains the Act is valid, and is being observed by the railroad company. If the Act is valid as to those trains, why not as to the "Knickerbocker Special?" They may not be engaged exclusively in the transportation of passengers from one State to another, but they must be, to some extent at least, engaged in interstate transportation; and if the Act is binding upon plaintiff in error, as to those trains, why should it not be as to the "Knickerbocker Special?" No distinction is perceived in law or principle. The Act in question must be binding as to all regular passenger trains or not as to any.

It is clear from both petition and answer that the so-called "Knickerbocker Special" was a regular passenger train within the meaning of the statute, and as such, subject to the provisions of the Act in question. Upon that point we quote from *Chicago & Alton R. R. Co. vs. People*, 105 Ill., 659, where it is said:

> "The train in question was equipped and operated in the same manner as any other passenger train on the road. It carried passengers and baggage as did other trains. It run upon the official time-table of the company as other trains did. Indeed, the only difference between this and the other passenger trains on the road was that the other two stopped at all the stations while this did not. On account of this difference, can the train, within the meaning of the statute, be regarded other than a regular passenger train? We think not The language of the act would not, perhaps, include a wild train, a freight train, an excursion train or a special train; but where a train was engaged in carrying passengers, running regularly every day upon an advertised time card of the company, equipped as all other passenger trains are, we are satisfied such a train was designed by the legislature to fall within the terms of the act, 'all regular passenger trains.' Had the legislature intended to except a fast train or a through train from the operation of the law, it would have been an easy matter to have framed the law in such a way that no doubt could have existed in regard to the intention, and if such had been intended, language of a different character would no doubt have been used.
>
> "But it is contended that if the act is broad enough to include the train in question, then its effect is a regulation of commerce between the States, and hence is inhibited by the constitution of the United States. The act does not undertake to regulate commerce between the States. It imposes no restriction upon the introduction or transportation of any article of commerce whatever. A State regulation which requires all passenger trains to stop at railroad crossings, at drawbridges, and requires the speed of trains to be reduced when running through incorporated towns and cities, has never, so far as we are informed, been regarded as a regulation of commerce, although the line of railroad thus regulated may pass through several States. And if the legislature has the right to require all trains to stop at a railroad crossing, and

to require the speed of all trains to be reduced when running through a city or incorporated town, on the same principle, and for a like reason, it has the power to require all regular trains to stop at the station in all county seats. A law of this character is but a proper exercise of the police power of the State, which has always been upheld and sustained by the courts.

"This railroad company accepted its charter upon the implied condition that its franchises would be exercised subject to the power of the State to impose such reasonable regulations as the comfort, safety or welfare of society might require. Numerous cases might be cited in support of this principle. In *Galena and Chicago Union R. R. Co. vs. Loomis*, 13 Ill. 548, a law requiring a bell or whistle to be attached to each engine upon a railroad, was sustained, and the court held that 'the legislature had the power, by the enactment of general laws, from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety.' In *Ohio and Mississippi R. R. Co. vs. McClelland*, 25 Ill. 140, an act requiring all railroads then in operation to be fenced, and imposing a penalty for non-compliance, was sustained, and it was held that acts of incorporation are subordinate to general police regulations. In speaking of railroad corporations it is there said: 'They are subject to be controlled for the general good * * * * and for that purpose, the legislature may, beyond all doubt, regulate the speed of their trains, require them to place guards at bridges and other points of danger, and they may, as they have done, require the sound of a whistle or bell at road crossings, for the safety of passengers, together with their property.'

"If the legislature had the right, in the exercise of the police power of the State, to provide for the regulation of railroad corporations in the respects named in the cases cited, there can be no doubt in regard to the validity of the law in question. Did the act contribute to the comfort, safety or welfare of the public? If it did, and did not deprive the company of any essential right conferred by its charter, its passage was a proper exercise of the police power. * * * * In the enactment of the law requiring all regular passenger trains to stop at county seats, the legislature, no doubt, had in view the great benefit the public would derive in the in-

creased facilities for reaching the county seat, to aid in the dispatch of business in the courts, in the prompt arrest and prosecution of criminals who might be indicted in the courts, in the attendance of witnesses, grand and petit jurors—indeed, in the prompt and efficient transaction of all business in the courts held at the county seat, and the facility for the examination of the records on the sale and conveyance of property. These and various other matters pertaining to the welfare of the public doubtless led to the enactment of the law, and in its enactment we are fully satisfied that the legislature transcended none of its powers, nor did it violate any chartered rights of the railroad company."

In *Ohio & Mississippi R. R. Co. vs. McClelland*, 25 Ill. 140, the Supreme Court of Illinois held that in granting a charter to a private corporation, the State does not part with any of its power to enact proper police regulations operating upon such corporation the same as upon individual persons, and these bodies accept their charters upon the implied condition that they are to exercise their rights subject to the power of the State to regulate their action as it may individuals. And other cases of like import are to be found in the decisions of the Supreme Court of that State.

EVERY PERSON AND CORPORATION WITHIN THE TERRITORIAL LIMITS OF A STATE, IS, WHILE THERE SUBJECT TO THE CONSTITUTIONAL AUTHORITY OF THE STATE GOVERNMENT.

In support of that proposition we quote from *Mississippi vs. Farmers' Loan and Trust Co.*, 116 U. S. 307, where it is said:

"There can be no doubt that each of the States through which the Mobile and Ohio Railroad passes incorporated the company for the purpose of securing the construction of a railroad from Mobile, through Alabama, Mississippi, Tennesee and Kentucky to some point near the mouth of the Ohio River, where it would connect with another railroad to the lakes, and form a continuous line of inter-state communication between the Gulf of Mexico in the south, and the Great Lakes in the north. It is equally certain that Congress aided in the construction of parts of this line of road so as to establish such a route of travel and transportation. But it is none the less

true that the corporation created by each State is, for all the purposes of local government, a domestic corporation, and that its railroad within the State is a matter of domestic concern. Every person, every corporation, everything within the territorial limits of a State is, while there, subject to the constitutional authority of the State government.

"Clearly under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State government. It may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi. So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of its road as lies within the State; to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, the convenience, or the safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others. This company is not relieved entirely from State regulation or State control in Mississippi simply because it has been incorporated by, and is carrying on business in, the other States through which its road runs. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the Constitution of the United States within the exclusive jurisdiction of Congress, that is to say, using the language of this Court in *Cardwell* v. *Bridge Co.*, 113 U. S., 205, 210, 'when the subjects on which it is exerted are national in their character, and admit and require uniformity of regulations affecting alike all the States.' Under this rule nothing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company or impair the usefulness of its facilities for interstate traffic. It is not enough to prevent the State from acting that the road in Mississippi is used in aid of interstate commerce. Legislation of this kind to be unconstitutional must be such as will necessarily amount to or operate as a regulation of business without the State as well as within."

In this connection we also call the attention of the Court to the opinion of the Supreme Court of Illinois in this case, (Rec. p. 35), where it is said:

> "In granting a charter to a private corporation the State does not part with its power to enact proper police regulations. Corporations accept their charters upon the implied condition that they are to exercise their rights subject to this power of the State. The legislature has the power, by the enactment of general laws from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety, health and welfare. (*Galena and Chicago Union R. R. Co. vs. Loomis*, 13 Ill. 548; *Ohio and Mississippi Railroad Co. vs. McClellan*, 25 *id.* 123; *Illinois Central Railroad Co. vs. People*, 143 *id.* 434.) This corporation operating a railroad across the State of Illinois is, for all purposes of local government, a domestic corporation, subject to the police control of the legislature of this State.
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> "In *Chicago & Alton Railroad Co. vs. People, supra*, it was said (p. 659): 'The train in question was equipped and operated in the same manner as any other passenger train on the road. It carried passengers and baggage as did other trains. It ran upon the official time table of the company as other trains did. Indeed the only difference between this and the other passenger trains on the road was, that the other two stopped at all stations while this did not. On account of this difference, can the train, within the meaning of the statute, be regarded other than a regular passenger train? We think not. The language of the act would not, perhaps, include a wild train, a freight train, an excursion train or special train; but where a train was engaged in carrying passengers, running regularly every day upon an advertised time card of the company, equipped as all other passenger trains are, we are satisfied such a train was designed by the Legislature to fall within the terms of the act, 'all regular passenger trains.' Had the legislature intended to except a fast train or a through train from the operation of the law, it would have been an easy matter to have framed the law in such a way that no doubt could have existed in regard to the intention, and if such had

been intended language of a different character would no doubt have been used.' To the same effect is *People ex rel v. Louisville and Nashville Railroad Co.*, 120 Ill. 48.

"In the case of *Stone v. Farmers' Loan and Trust Co.*, 116 U. S., 307 it was said: 'There can be no doubt that each of the States through which the Mobile and Ohio railroad passes incorporated the company for the purpose of securing the construction of a railroad from Mobile, through Alabama, Mississippi, Tennessee and Kentucky, to some point near the mouth of the Ohio river, where it would connect with another railroad to the lakes, and thus form a continuous line of interstate communication between the Gulf of Mexico in the south and the Great Lakes in the north. It is equally certain that Congress aided in the construction of parts of this line of road so as to establish such a route of travel and transportation; but it is none the less true that the corporation created by each State is, for all the purposes of local government, a domestic corporation, and that its railroad within the State is a matter of domestic concern. Every person, every corporation, everything with the territorial limits of a State, is, while there, subject to the constitutional authority of the State government. Clearly, under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State government. It may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi. So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of the road as lies within the State; to stop its trains at railroad crossings; to slacken speed while running in a crowded thoroughfare; to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, convenience or safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others. This company is not relieved entirely from State regulation or State control in Mississippi simply because it has been incorporated by and is carrying on business in the

other States through which its road runs. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the Constitution of the United States within the exclusive jurisdiction of Congress,—that is to say, using the language of this Court in *Cardwell v. Bridge Co.*, 113 U. S. 210, (Bk. 28 L., ed., 961,) 'when the subjects on which it is exerted are national in their character and admit and require uniformity of regulations affecting all states alike.' Under this rule, nothing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company or impair the usefulness of its facilities for interstate traffic. It is not enough to prevent the State from acting that the road in Mississippi is used in the aid of interstate commerce. Legislation of this kind, to be unconstitutional, must be such as will necessarily amount to or operate as a regulation of business without the State as well as within.

"Whilst the regulation and control of interstate commerce has been confined exclusively to Congress, and a State can interfere with transportation into or through its borders only to the extent absolutely necessary for its own protection, still, whatever tends to promote the health, safety or welfare of society would be a proper exercise of the police power. (*Toledo, Wabash and Western Railway Co. vs. City of Jacksonville*, 67 Ill. 37.) Whatever is necessary to provide for the public welfare and the general security is within the police power of the government. Whether a particular regulation is a reasonable exercise of the police power is strictly a judicial question, but the law-making power is the sole judge of when the necessity exists, and when, if at all, it will exercise the right to enact such laws. As held in *Chicago and Alton Railroad Co. vs. People, supra:* 'The prompt and efficient transaction of all business in the courts held at the county seat, * * * and various other matters pertaining to the welfare of the public, doubtless led to the enactment of the law.' Such a statute for such a purpose, would be a proper exercise of the police power of the State.

"It is insisted that while by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons, and for the protection of property there situated, yet, a subject matter which has been confided exclusively to Congress by the

Constitution is not within the jurisdiction of the police power of the State unless placed there by Congressional action. Whilst admitting this proposition to be true so far as it goes, yet we find no warrant for holding that the State is excluded from an exercise of a police power looking to the general welfare of the public, or that that subject-matter has been by the Constitution confided exclusively to the Congress of the United States. Although the regulation of the interstate commerce is confided to Congress, the railroads within this State are domestic concerns, subject to the constitutional authority of the State government, which may regulate freights and fares for business done exclusively within the State, and make needful police regulations. As held in *Stone vs. Farmers' Loan and Trust Co., supra*, 'this company is not relieved entirely from State regulation or State control, because it has been incorporated by and is carrying on business in the other States through which its road runs.' If this latter fact deprived the State of the exercise of the police power, the lives and property of its citizens might be sacrificed in crowded thoroughfares and the State be powerless to protect them.

"It is finally urged that as this train was demanded by and put on solely to meet the requirements of interstate travel and was intended for no local business, to compel it to stop at county seats and do a local business would be a violation of the Federal Constitution, inasmuch as such action would interfere with and regulate interstate commerce. This railroad company, at the time of the filing of this petition, was running its trains over the tracks of what is known as the Terre Haute & Alton Railroad Company, which was incorporated under an act of the legislature of the State of Illinois in force January 28, 1851. At the same session of the legislature a supplementary act was also enacted in relation to the incorporation of the Terre Haute & Alton Railroad Company, which supplemental act went into effect February 13, 1851. An act was also passed by the legislature of the State of Illinois amending the act in relation to the incorporation of the Terre Haute & Alton Railroad Company, which last act went into force February 28, 1854. These acts were declared to be public acts. The authority for constructing, operating and maintaining the track over which trains of the appellant pass was all derived through and from the State of Illinois. At the time of the construction of the railroad over which the trains of the appellant company pass, the city of Hillsboro

was one of the objective points through which it was to run, as designated in and by the authority granted to the company by the legislature of the State of Illinois. This company can not, by its manner of doing business, escape State control and disregard a statute of the State which seeks to regulate and control domestic concerns within the limits of the State for the public welfare and general good. Appellant's 'Knickerbocker Special' is not national in its character, requiring uniformity of regulations affecting all States alike.

"The Illinois act operates as a regulation of business within the State only. We hold this act is not an interference with interstate commerce, but a mere police regulation, applicable solely to the limits of the State of Illinois. It no more interferes with the expedition with which trains passing through the State carrying passengers from one State to another exclusively may reach their destination than does a regulation limiting the speed of trains running through a crowded thoroughfare; and like the latter regulation, is for the public welfare.

"It was not error to sustain the demurrer to the answer, and the judgment of the Circuit Court of Montgomery County is affirmed."

II.

A STATE LEGISLATURE HAS POWER TO REGULATE RAILROAD CORPORATIONS IN THE EXERCISE OF THEIR CORPORATE FRANCHISES, SO AS TO PROVIDE FOR THE PUBLIC SAFETY, WELFARE AND CONVENIENCE.

Galena & Chicago U. R. R. Co. v. *Loomis*, 13 Ill., 548.

Potter's Dwarris on Stat., 458.

Cooley's Const. Lim. (6 ed., p. 715).

Ohio & Mississippi R. R. Co. v. *McClelland*, 25 Ill., 140.

Lake View v. *Rose Hill Cemetery*, 70 Ill., 191.

C. & A. R. R. Co. v. *People*, 105 Ill., 657.

People v. *L. & N. R. R. Co.*, 120 Ill., 49.

Illinois Central R. R. Co. v. *People*, 143 Ill., 435.

Lake Shore & M. S. Ry. v. *Ohio*, 173 U. S., 285.

We shall not attempt here to cite the numerous authorities supporting the above proposition, or even to examine those we cite. That has been done by this Court so fully and authoritatively in *L. S. & M. S Ry. Co.* v. *Ohio, supra*, and the cases there cited are so familiar to the members of this Court, that we do not feel warranted in examining ground so fully and authoritatively covered by that decision. But what is there said, however, is so directly in point in this case, that we feel justified in quoting somewhat at length from the opinion in that case. It is there said, page 298:

> "It is not contended that the statute in question is repugnant to the Constitution of the United States, when applied to railroad trains carrying passengers between points within the State of Ohio, but the contention is that, to require railroad companies, even those organized under the laws of Ohio, to stop their trains, or any of them carrying interstate passengers, at a particular place or places in the State, for a reasonable time, so directly affects commerce among the States as to bring the statute, whether Congress has acted or not on the same subject, into conflict with the grant in the constitution of power to regulate such commerce. That such a regulation may be in itself reasonable and may promote the public convenience or subserve the general welfare, is, according to the argument made before us, of no consequence whatever; for it is said, a State regulation which, to any extent, or for a limited time only, interrupts the absolute, continuous freedom of interstate commerce, is forbidden by the constitution, although Congress has not legislated upon the particular subject covered by the State enactment. If these broad propositions are approved, it will be difficult to sustain the numerous judgments of this Court, upholding local regulations, which, in some degree, or only incidentally, affected commerce among the States, but which were adjudged not to be, in themselves, regulations of interstate commerce, but within the police powers of the States, and to be respected so long as Congress did not itself cover the subject by legislation." (Citing cases.)
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> (Page 300).

"The statute in question is not directed against interstate commerce, nor is it, within the necessary meaning of the Constitution, a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation in aid of commerce, and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits, until displaced by such national legislation as Congress may rightfully establish under its power to regulate commerce with foreign nations, and among the several States. The validity of the statute, so far as the commerce clause of the Constitution of the United States is concerned, can not be questioned.

"Consistently with these doctrines, it can not be adjudged that the Ohio Statute is unconstitutional. The power of a State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either kind is inconsistent with any power granted to the general government, is to be determined by the same rules."

(p. 302), "The plaintiff in error accepted its charter, subject, necessarily, to the condition that it would conform to such reasonable regulations as the State might, from time to time, establish, that were not in violation of the supreme law of the land. In the absence of legislation by Congress, it would be going very far to hold that such an enactment as the one before us, was, in itself, a regulation of interstate commerce. It was for the State to take into consideration all the circumstances affecting passenger travel within its limits, and, as far as practicable, make such regulations as were just to all who might pass over the road in question. It was entitled, of course, to provide for the convenience of persons desiring to travel from one point to another in the State on domestic trains, but it was not bound to ignore the convenience of those who desired to travel from places in the State to places beyond its limits, or the convenience of those outside of the State, who wish to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the State without stopping. Any other view of the relations between

the State and the corporation created by it, would mean that the directors of a corporation could manage its affairs solely with reference to the interests of stockholders, and without taking into consideration the interests of the general public. It would mean not only that such directors were the exclusive judges of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, that the corporation could so regulate the running of its interstate trains as to build up cities and towns at the ends of its line, or at favored points, and by that means destroy or retard the growth and prosperity of those at intervening points. It would mean also that, beyond the power of the State to prevent it, the defendant railway company could run all its trains through the State without stopping at any city within its limits, however numerous its population, and could prevent the people along its road within the State, who desired to go beyond its limits, from using its interstate trains at all, or only at such points as the company chose to designate. A principle that, in its application, admits of such results can not be sanctioned."

We shall not attempt to review or criticise the able and exhaustive opinions, either majority or minority, in that case, or even attempt to examine or distinguish the numerous opinions of this Court there cited. It is sufficient and perhaps proper to say, that these opinions aptly illustrate the conflict between States' Rights and National Power that has been going on in this country almost from the foundation of the Republic, and that while we do not feel warranted in passing upon the merits of that controversy in any broader way, we do think that the several State governments are vested with all power not expressly granted to the general government, or necessarily implied by such grants, and that in case of serious doubt, that doubt should be resolved in favor of the legislatures of the several States.

In this connection, we call the attention of the Court to the fact that the statute here in question is not a special statute, enacted for the prevention or obstruction of interstate commerce, but that it is only one of a series of sections embodied in an Act

entitled, "An Act in relation to fencing and operating railroads," which has been in operation in the State of Illinois for over twenty-five years. (See Hurd's Revised Statutes, 1899, Chap. 114, pages 1328 to 1335 inclusive.) Without examining the provisions of that Act in detail, it is sufficient here to say that it provides for sign boards and flagmen at railroad crossings; for sounding bell or whistle at highway crossings; for a full stop before reaching a draw bridge; for brakemen on freight and passenger trains; prohibits baggage smashing, obstruction of streets and highways, and contains numerous other salutary provisions regulating the use and operation of railroads in this State.

Of course we understand, that the only section here in controversy, is the one requiring all regular passenger trains to stop at county seats a sufficient length of time to let passengers on and off with safety. But in passing upon the validity of that section, the scope and operation of the Act as a whole should we think be considered, in order to determine not only the meaning and effect of that particular section, but the intention of the Legislature in the passage of the Act. And when that is done, we are persuaded that nothing will be found in the Act to indicate any intention on the part of the Legislature to obstruct, or in any way interfere, with interstate commerce. It can not be safely said that passenger trains engaged in interstate commerce ought not, on general princples, to be subjected to the police or governmental power of the State, for the safety and welfare of their passengers, as well as of the public, as much as those not exclusively engaged in such interstate traffic. It causes some little delay, usually not to exceed five minutes, to stop at a draw-bridge or a railroad crossing, as well as at a county seat, but who will say that such stops are not necessary, and who should determine the necessity except the people of the State in which the railroad is chartered and operated. Every one would shudder with horror at

the thought that a passenger train should be permitted, or rather that it should not be prohibited, from plunging across a railroad crossing or a draw-bridge without stopping to see if the way is open and free from danger. And that, of course, causes some delay. And what would be thought of a person who insisted that certain trains not engaged exclusively in interstate commerce were properly required to make such stops, but that those engaged exclusively in interstate commerce were not and should not be so prohibited. No distinction in principle can be made between such a case and the present one. They would both rest at least upon the power of the legislature to enact such a law. It is well settled law that the police power of a State extends not only to the public health and safety but to the convenience and welfare of the public, as well. And if a State Legislature has the power to say that all passenger trains before crossing a draw-bridge or a railroad shall come to a full stop, it has equal power to say, in furtherance of the convenience and welfare of the public, that all trains shall stop at county seats, whether they are engaged in interstate commerce or not. It has the same power to say that such trains shall move slowly through crowded thoroughfares, and yet such regulations must, to some extent, delay the speed of the train, and if that train is engaged exclusively in interstate commerce, prevent it from making connections with other trains and other roads with which it was intended to connect. In fact, the greater the speed of the train, the greater the necessity for such statutory regulations. Such delays, however, are merely incidental to the operation of all trains, whether engaged in interstate commerce or not. The statutes providing for such regulations are not enacted for the purpose of causing delays, nor for the purpose of interfering in any way with interstate commerce, but for the sole purpose of safeguarding passengers and the public. We have said in another connection that all railroad

trains in this country are engaged, more or less, in interstate commerce, and that is true. Take the four trains which plaintiff in error says pass each way through Hillsboro each day, from St. Louis to Indianapolis; and which are not engaged exclusively in interstate commerce, but carry passengers from St. Louis to Indianapolis, or from one State to another, and there those passengers take other trains in the direction of their journey's end in some other State; and in that way they are nearly all going from one State to another. So it is with others who leave St. Louis or travel toward St. Louis via the Big Four Railroad on those trains, and make connection with other trains or other roads in the State of Illinois. They, too, are going from one State to another, but by a slower train, and they too, are, for the time being, subjects of interstate commerce, yet they must, according to the argument of counsel for plaintiff in error, suffer the delay at county seats, as well as at railroad crossings and draw bridges, as required by the statute. Where, then, is the distinction between trains engaged exclusively in interstate commerce, and those that are not? There is none. It all depends upon the power and enactment of the legislature, and where it has spoken, the law is as obligatory upon trains engaged exclusively in interstate commerce, as upon those that are not. We know that laws and constitutions are constantly changing, and that, in this country, the law is, what this Court finally determines it to be, and we are glad to know that this case is in the hands of Judges of long and varied experience, and learned in the law, who will give the case and the principles involved the most thorough and deliberate consideration before determining it. And we have confidence to believe that when that is done, the power of regulating and controlling the operation of railroad trains will be found to be in the legislature of the State where the railroad is operated.

In *Nicol vs. Aimes*, 173 U. S., 509, it was held that:

> "When an act of Congress is claimed to be unconstitutional, the presumption is in favor of validity, and it is only when the question is free from any reasonable doubt that this Court should hold an act of the law-making power of the government to be in violation of that fundamental instrument upon which all the powers of the Government rest."

And the same rule should, of course, apply to an Act of the legislature of a State; and the books are full of cases in which that rule has been applied to an Act of a State Legislature.

That rule is so well settled as to be beyond question, and we invoke its application to this case; the conflicting views of the members of this Court, evidenced by the majority and minority opinions in *L. S. & M. S. Ry. Co. vs. Ohio, supra*, may, perhaps, be instanced to show that the power of the Legislature of the State of Illinois, to pass the Act here in question, is not free from reasonable doubt, and if that be so, then under the rule stated, it should be sustained as a valid enactment.

There is another feature of this case to which we ask the attention of the Court: The demurrer to the amended answer, (Rec. p. 25-26) questions the sufficiency of that answer, on several grounds, the third and fourth being as follows:

> 3rd. "Your petitioner further demurs to that part of respondent's answer, in which it is said, that such train is not a regular passenger train for carrying passengers from one point to another in the State of Illinois, and that such traffic is already sufficiently and amply provided for by trains passing over its road, in this, that this is a mere conclusion, reached by the respondent.
>
> 4th. "Also, that such answer of the respondent is argumentative in this, that the facts which the respondent undertakes to set up in its answer, by way of its defense, are not set forth and averred in an affirmative manner, but are argumentative and mere conclusions."

An examination of the answer (Rec. pp. 22, 23, 24) will show that these points of demurrer are well taken. A plea or answer

should, of course, state facts and not conclusions of law or fact. The answer in question does not conform to that rule. It states certain facts, but it is full of conclusions of law and fact. Thus, (Rec. p. 22).

> "It further avers, that during all the time such railroad has been operated by this respondent, it has furnished, and now furnishes, a sufficient number of regular passenger trains to accommodate all the local and through business along the line of its road, and especially all the local and through passenger business arriving at or destined for the City of Hillsboro."

And again page 22.

> "Respondent further shows, that such regular passenger trains had been running for a long time over said road, and have been, and now are, ample and sufficient to accommodate the public, and all the business along its line in the State of Illinois, and to furnish convenient and ready facilities for travel to the said people of Hillsboro, and from the various points over said railway, and to points beyond the lines of said railway, without delay, by the connections of said trains, and affording ample facilities for travel to all persons desiring to travel to and from Hillsboro."

These, and other averments to that effect, are, we submit, mere conclusions of the pleader, and, in those respects, the points of demurrer quoted are well taken. Those averments are incapable of proof, except by the opinions of witnesses, concerning which such opinions would inevitably differ, and upon which the validity of the Act in question in no wise depends. That Act requires that all regular passenger trains shall stop at county seats a sufficient length of time to let passengers on and off with safety, and not that some passenger trains shall stop. And the amended answer was, therefore, argumentative and evasive, as pointed out in the demurrer.

If the Act in question is valid and constitutional, it affects all regular passenger trains alike, and respondent can not, or should not, escape on any of the grounds stated in the answer.

We also call the attention of the Court to the Act of the General Assembly of the State of Illinois, incorporating the Terre Haute and Alton R. R. Co., referred to in the opinion of the Supreme Court of the State of Illinois, (Rec. p. 38) over the tracks of which the trains of the plaintiff in error are operated. Section 1 of that Act, (Public and Private Laws, 1851, p. 29) provides—

"SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That Robert Smith, Cyrus Edwards, Simeon Ryder, Samuel Wade, Thomas G. Hawley, Robert Ferguson Philander C. Huggins, John S. Hayward, Joseph T. Eccles, George Burnap, Thomas Phillips, Thomas A. Gray, William Wood, William F. Thornton, Joseph L. Dexter, John D. Bruster, Joseph Oliver, John Ward, John Small, Byrd Monroe, Hezekiah J. Ashmore, John M. Easton, James Cunningham, Ebenezer Noyes, Isaac Sanford, Richard B. Southerland, Allanson Baldwin, George Redman, and all other persons who have or may become stockholders in the capital stock of the corporation hereinafter mentioned, in conformity to the provisions of the 'An Act to provide for a general system of railroad incorporations', enacted by the General Assembly of the State of Illinois, and approved November 5, 1849, and to the provisions of that act, they and their associates, successors and asssigns, shall be and are hereby created a body politic and corporate, by the name of 'The Terre Haute and Alton Railroad Company,' and by that name they and their successors and assigns shall and may continue for the term of fifty years from and after the passage of this Act, and are hereby authorized and empowered to construct and complete, and during its existence to maintain and continue, a railroad, with a single or double track, and with all such appendages as may be necessary for the convenient use of the same, commencing at a point on the state line between the states of Indiana and Illinois, in a direction for Terre Haute, Indiana; thence to Paris, in Edgar county; thence to Charleston in Coles county; thence to Shelbyville in Shelby county; thence to Hillsboro, in Montgomery county; thence to Bunker Hill, in Macoupin county; and thence to Alton, on the Mississippi river, in the State of Illinois."

Sec. 10 of that Act is as follows:

> "The said corporation is hereby authorized, by and with the consent of the State of Indiana, to extend said railroad to Terre Haute, Indiana, or to form a connection with any company that may be formed for that purpose by the authority of the State of Indiana."

Thus, clearly showing that it was the intention of the legislature to give the city of Hillsboro, and the other objective points named in that Act, the benefit of interstate, as well as of State commerce, and we submit, that plaintiff in error, in the management and operation of its trains, is bound by that Act, and can not legally, discriminate against the City of Hillsboro, in the transportation of interstate commerce, in which it is, or may be engaged.

Respectfully submitted,

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